

COPY

UCLA
SETTLEMENT AGREEMENT CAMPUS HUMAN RESOURCES
AND
RELEASE OF ALL CLAIMS 02 SEP 30 PM 4:18

This Settlement Agreement and Release of All Claims ("Agreement") is made between Dr. Dennis Kelly ("Kelly"), The REGENTS OF THE UNIVERSITY OF CALIFORNIA ("University" or "UCLA") and Dr. Edward Wiesmeier ("Wiesmeier") (Kelly, The Regents and Wiesmeier are hereinafter referred to as "the Parties") with respect to the following:

Kelly is a physician with the University with the Student Health Center. His employment began in 1980, and will end on March 6, 2003.

Through this Agreement, the Parties desire to settle and resolve forever all claims, disputes, charges, or otherwise, that have been raised, could be raised now or in the future, concerning and arising out of Kelly's employment with the University.

THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Paragraph First: Non-Admission of Liability

Neither the University, UCLA, nor any of its employees expressly or impliedly admit to any liability at all for any of the actions complained of by Kelly. UCLA has reached this agreement solely to avoid the costs, expense and uncertainty of litigation.

Paragraph Second: End of Active Employment

- (a) Kelly's active employment with the University has ended as of July 31, 2002.
- (b) After this date, Kelly will no longer provide any professional services to the University.
- (c) Notwithstanding the fact that Kelly will not remain in active employment, Kelly will remain on paid status, as is explained in Paragraph Third.

Paragraph Third: Terms and Conditions of Salary and Benefit Payment to Kelly During Paid Status Period

- (a) During the portion of Kelly's paid status, for the period that runs from August 1, 2002 through September 22, 2002, Kelly's salary will be paid at his regular pay rate as of August 2, 2002 and at his regular appointment rate of 50%, Kelly will remain entitled to any and all benefits of his employment, and any and all of Kelly's benefits will accrue at that same rate through the end of his employment.
- (b) During the remainder of Kelly's paid status, for the period that runs from September 23, 2002 through March 6, 2003, Kelly's salary will be paid at his regular pay rate as of August 2, 2002, and at his regular appointment rate of 50%, Kelly will remain

entitled to any and all benefits of his employment, and any and all of Kelly's benefits will accrue at that same rate. Furthermore, Kelly's salary shall be paid only from his accrued vacation time until March 6, 2003, which hours will amount to 436 and any holiday pay he will have accrued between September 23, 2002 and March 6, 2003.

- (c) Kelly agrees to resign his position with the University effective March 6, 2003. At the time Kelly executes this Agreement, he will execute the attached letter of resignation, Attachment A, which is fully incorporated herein, and agrees that the letter shall be deemed submitted, accepted and effective on March 6, 2003.

Paragraph Fourth: Lump Sum Payment Paid to Kelly When His Employment with University Ends

- (a) When Kelly's employment with the University ends, The University shall pay to Kelly a gross lump sum payment of \$68,320.00, without any withholdings.
- (b) This payment will be made to him no later than 5 days after March 6, 2003, which payment shall be delivered to the office of his attorneys Walker and Wheatley.
- (c) This payment to Kelly will be reported to the IRS by Form 1099.

Paragraph Fifth: Payment by University of Kelly's Attorneys' Fees

Within twenty one days of Kelly's signing of this Agreement, the University will pay to Kelly's attorneys a gross lump sum payment in the amount of \$46,680.00, made payable to Walker and Wheatley, and delivered to that office. This payment to Walker and Wheatley will be reported to the IRS by Form 1099.

Paragraph Sixth: Mutual Non-Disparagement

The parties shall refrain from making, publishing, posting, or authorizing the publication of any derogatory or disparaging statements to any other person or third parties about each other, or any related entities, affiliates, subsidiaries, officers, directors, attorneys or any party individually or collectively.

Paragraph Seventh: Employment References for Kelly

If a prospective employer seeks an employment reference for Kelly, Kelly will refer employer to Employee Relations Specialist Michael Beasley in the Campus Human Resources Office or his successor. Should Dr. Wiesmeier or other student health center managers receive a request for an employment reference for Kelly, they will be referred to Mr. Beasley or his successor. This office will provide only the following information: Title, Dates of Employment and last salary.

Paragraph Eighth: Vacating of Kelly's Office And Returning University Property

Kelly will vacate his office and remove his possessions no later than August 9, 2002 or at a time and date mutually agreed upon by all parties by making an appointment with Purchasing

Manager Adrian Martinez who shall remain on the premises during the packing and moving. The University will not overbearingly scrutinize these activities by Kelly. At the end of his employment, the University will not escort Kelly off the premises with any Security personnel. Kelly agrees to perform these chores after hours at a prearranged time. Kelly also agrees to return to the University his ID badge, parking decal and any keys, files, materials, equipment or office property by the effective date of this Agreement.

Paragraph Ninth: Kelly's Goodbye Email

Kelly will be permitted to send a goodbye email to his co-workers at the University, the substance of which is attached to this Agreement and fully incorporated herein as Exhibit B.

Paragraph Tenth: No Contact by Kelly with University Personnel

After August 9, 2002, Kelly will not contact any University personnel at the University workplace to discuss any matters concerning any aspect of the University whatsoever. Any questions Kelly has for the University must be presented through his attorneys to the University's attorney, Susan von Seeburg, for resolution. However, Kelly is permitted to engage in social contacts that do not otherwise violate any other provisions of this Agreement. For each occasion where Kelly violates this provision, Kelly is liable to the University for a penalty in the amount of \$5,000.

Paragraph Eleventh: No Future Employment

(a) As further consideration of this Agreement, Kelly understands and agrees that he will neither seek nor accept employment of any kind at any time with the University of California.

(b) Should Kelly ever become so employed, the University shall be entitled to dismiss him immediately without cause, and shall be entitled to use this Agreement as the sole and sufficient evidence to dismiss him.

(c) Should Kelly be removed from any employment under the terms of Paragraph Eleventh (b), he will not sue to recover his employment, and will be responsible for the University's costs and attorney's fees in the event that he should ever initiate a lawsuit over this paragraph.

(d) Kelly is free to seek to have the provisions of this paragraph waived, provided such actions do not otherwise violate any other provisions of this Agreement.

Paragraph Twelfth: Confidentiality

(a) The Parties understand and agree that the terms of the Agreement shall be kept strictly confidential except that they may disclose the terms to their attorneys, immediate family members, accountants and financial advisors or to enforce this agreement or as required by subpoena, court order or other applicable law. Kelly understands and agrees that the University

is a public agency, subject to the California Public Records Act ("CPRA") and that this Agreement is a public record. The University agrees that it will not publicize the Agreement, and will not disclose its terms, except as may be required under CPRA or as listed above.

(b) Notwithstanding the above, each of the Parties agrees that if asked about the matter, each will say nothing other than, "the matter was resolved to the mutual satisfaction of the parties."

Paragraph Thirteenth: Mutual General Release of All Claims

(a) In exchange for the consideration described herein, Kelly hereby unconditionally, irrevocably and absolutely releases and discharges The Regents of the University of California, UCLA, as well as any other present or former employees, officers, agents, attorneys, successors and assigns of The Regents (collectively, "Released Parties"), including but not limited to, Dr. Edward Wiesmeier from all claims related in any way to the transactions or occurrences between them to date arising out of Kelly's employment relationship with the University to the fullest extent permitted by law. This release is intended to be interpreted broadly to apply to all transactions and occurrences between Kelly and any Released Party to date, including but not limited to any and all claims related to Kelly's employment and employment conditions with The Regents, including, but not limited to, performance evaluations, disciplinary actions, formal or informal performance reviews, and all other losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with these transactions or occurrences and Kelly's employment and or working relationship.

(b) Kelly's release includes, without limitation, any claim based in tort, contract, common law, the state or federal Constitution, state or federal statutes (including, without limitation, the California Fair Employment and Housing Act, the Age Discrimination in Employment Act, the California Civil Code, the California Government Code, and Title VII of the Civil Rights Act of 1964), and all claims for attorneys fees, costs and expenses, as well as all workers compensation claims for emotional injury, grievances, claims and/or appeals under The Regents or the University of California's internal administrative review procedures.

(c) In exchange for the consideration described in this Agreement, The Regents of the University of California, UCLA and Dr. Edward Wiesmeier hereby unconditionally, irrevocably and absolutely release and discharge Kelly from any all claims related in any way to the transactions or occurrences between them to date arising out of Kelly's employment relationship with the University to the fullest extent permitted by law. This release is intended to be interpreted broadly to apply to all transactions and occurrences between Kelly and The Regents, UCLA and Dr. Wiesmeier to date, including but not limited to any and all claims related to Kelly's employment and employment conditions with The Regents, including, but not limited to, performance evaluations, disciplinary actions, formal or informal performance reviews, and all other losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with these transactions or occurrences and Kelly's employment and or working relationship.

(d) The Regents of the University of California, UCLA and Dr. Wiesmeier's release includes, without limitation, any claim based in tort, contract, common law, the state or federal Constitution, state or federal statutes (including, without limitation, the California Fair Employment and Housing Act, the Age Discrimination in Employment Act, the California Civil Code, the California Government Code, and Title VII of the Civil Rights Act of 1964), and all claims for attorneys fees, costs and expenses, as well as all workers compensation claims for emotional injury, grievances, claims and/or appeals under The Regents or the University of California's internal administrative review procedures.

Paragraph Fourteenth: Unknown or Different Facts

The Parties acknowledge that each may discover facts different from, or in addition to, the facts each knows or believes to exist with respect to a claim released in Paragraph Thirteenth. Each agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects notwithstanding such different or additional facts.

Paragraph Fifteenth: California Civil Code Section 1542 Waiver

The Parties expressly acknowledge and agree that the releases contained in this Agreement include a waiver of all rights under Section 1542 of the California Civil Code. This statute reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OF OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS/HER SETTLEMENT WITH THE DEBTOR.

Each party acknowledges that each has read all of this Agreement, including the above Civil Code section, and that each fully understands both the Agreement and the Civil Code section. The Parties each waive any benefits and rights granted to them pursuant to Civil Code section 1542.

Paragraph Sixteenth: Characterization of Kelly's End of Employment

The University will characterize the end of Kelly's employment as a voluntary separation.

Paragraph Seventeenth: No Prior Assignments or Liens

Kelly represents and warrants that he has not assigned to any other person or entity any Released Claim. Kelly further represents and warrants there are no liens or claims against any of the amounts being paid by The University as provided in this Agreement. Kelly agrees to defend, indemnify and hold The University harmless from any liability, losses, claims, damages, costs or expenses, including reasonable attorneys' fees, arising out of a breach of the representations and warranties contained in this paragraph.

Paragraph Eighteenth: Mediation

The Parties understand and agree that they shall attempt to resolve any and all differences or disputes concerning or arising under this Agreement first, informally through their counsel, then, if necessary, through mediation before a mutually agreed upon mediator. The Parties agree to participate fully under this paragraph in good faith.

Paragraph Nineteenth: Promise Not to Prosecute

The parties agree, to the fullest extent permitted by law, that they will not prosecute or allow to be prosecuted on their behalf, in any administrative agency or court, whether state or federal, any claim released in Paragraph Thirteenth. If any such action is brought, this Agreement will constitute an Affirmative Defense thereto, and the defending party shall be entitled to recover reasonable costs and attorneys fees incurred in defending against any such claim.

Paragraph Twentieth: Severability

Should it be determined by a court that any term of this Agreement is unenforceable, that term shall be deemed to be deleted. However, the validity and enforceability of the remaining terms shall not be affected by the deletion of the unenforceable terms.

Paragraph Twentieth First: Attorneys Fees and Costs

Kelly and The Regents agree to bear their own attorneys fees and expenses incurred in connection with the negotiation and execution of this Agreement, and any claim released in Paragraph Sixth.

Paragraph Twentieth Second: Modifications

This Agreement may be amended only by a written instrument executed by all Parties hereto.

Paragraph Twentieth Third: Cooperation

The Parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

Paragraph Twentieth Fourth: Interpretation; Construction

The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing Kelly, but the University and its counsel have participated in the negotiation of its terms. The parties acknowledge they have had an opportunity to review and discuss each term of this Agreement with legal counsel and, therefore, the normal rules of construction to the effect that

any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

Paragraph Twentieth Fifth: Entire Agreement

The Parties to this Agreement declare and represent that no promise, inducement or agreement not herein discussed has been made between the Parties, and that this Agreement contains the entire expression of agreement between the Parties on the subjects addressed herein.

Paragraph Twentieth Sixth: Counterparts

This Agreement may be executed in counterparts. The execution of a signature page of this Agreement shall constitute the execution of the Agreement, and the Agreement shall be binding on each party upon that party's signing of such a counterpart. A signed copy of the Agreement is as admissible as the original in any subsequent proceeding.

Paragraph Twentieth Seventh: Advice of Counsel

The Parties declare and represent that they are executing this Agreement with full advice from their respective legal counsel.

Paragraph Twentieth Eighth: Older Workers Benefits Protection Act

It is the intention of the Parties that the releases contained in this Agreement apply to all claims for any kind against The Regents. In order to comply with the Older Workers Benefits Protection Act (29 U.S.C. § 626(f) and effectuate the release by Kelly of any potential claims under the federal Age Discrimination in Employment Act, Kelly agrees as follows: (i) he has carefully reviewed the foregoing Agreement, and understands the terms and conditions it contains; (ii) by entering into this Agreement, he is giving up potentially valuable legal rights, and he intends to be bound by all the terms and conditions set forth above; (iii) he is entering into this Agreement freely, knowingly, and voluntarily; (iv) he is receiving consideration beyond anything of value to which he is already entitled; (v) he has had 21 days to consider whether to agree to the terms and conditions set forth in this Agreement; and (vi) for a seven day period following execution of the Settlement Agreement and General Release, Kelly may revoke this Agreement by delivering a written revocation to University Counsel Susan von Seeburg, Office of the General Counsel, 1111 Franklin Street, 8th Floor, Oakland, CA 94612. For this revocation to be effective, written notice must be received by Ms. von Seeburg no later than the close of business on the seventh day after Kelly signs it. If Kelly revokes this agreement, it shall not be effective or enforceable and Kelly will not receive the benefits described herein. If Kelly does not revoke this Agreement, its effective date shall be the eighth day after Kelly's signature.

WHEREFORE, THE PARTIES HAVE VOLUNTARILY EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

Dated: August __, 2002

By: _____
Dr. Dennis Kelly

REGENTS OF THE UNIVERSITY
OF CALIFORNIA

Dated: August 8, 2002

By: Edward Wiesmeier
Dr. Edward Wiesmeier

APPROVED AS TO FORM AND SUBSTANCE:

Dated: August __, 2002
Walker & Wheatley
Attorneys at Law

Dated: August 6, 2002

REGENTS OF THE UNIVERSITY OF
CALIFORNIA

By: _____
Mickey Wheatley, Esq.
Representing Dr. Dennis Kelly

By: Susan von Seeburg
Susan von Seeburg, Esq.
Representing The Regents of the University of
California and Dr. Edward Wiesmeier

WHEREFORE, THE PARTIES HAVE VOLUNTARILY EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

Dated: August 5, 2002

By: Dr. Dennis Kelly

REGENTS OF THE UNIVERSITY
OF CALIFORNIA

Dated: August 8, 2002

By: Edward Wiesmeier
Dr. Edward Wiesmeier

APPROVED AS TO FORM AND SUBSTANCE:

Dated: August 5, 2002
Walker & Wheatley
Attorneys at Law

Dated: August __, 2002

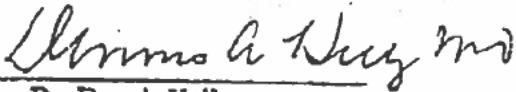
REGENTS OF THE UNIVERSITY OF
CALIFORNIA

By: Mickey Wheatley
Mickey Wheatley, Esq.
Representing Dr. Dennis Kelly

By: Susan von Seeburg, Esq.
Representing The Regents of the University of
California and Dr. Edward Wiesmeier

WHEREFORE, THE PARTIES HAVE VOLUNTARILY EXECUTED THIS
AGREEMENT ON THE DATES SHOWN BELOW.

Dated: August 5, 2002

By: 
Dr. Dennis Kelly

REGENTS OF THE UNIVERSITY
OF CALIFORNIA

Dated: August __, 2002

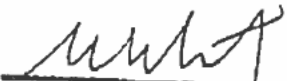
By: _____
Dr. Edward Wiesmeier

APPROVED AS TO FORM AND SUBSTANCE:

Dated: August 5, 2002
Walker & Wheatley
Attorneys at Law

Dated: August __, 2002

REGENTS OF THE UNIVERSITY OF
CALIFORNIA

By: 
Mickey Wheatley, Esq.
Representing Dr. Dennis Kelly

By: _____
Susan von Seeburg, Esq.
Representing The Regents of the University of
California and Dr. Edward Wiesmeier

Exhibit B to Kelly/University of California Agreement

After 23 years, it is time to say goodbye. My last day working in Student Health was July 30.

Those years have no question been an opportunity for growth and professional fulfillment for me. In addition, I have been blessed to do a job that I have loved and to work with an exceptionally caring and talented group of colleagues over that time. I have also been privileged to have the opportunity to be a physician to our wonderful patients, from whom I have learned much. I'll always remember the many good times. Saying goodbye has never been easy for me so at this time I hope you understand why this farewell is not in person. I hope we stay in touch!

Continue the care that you give to the students and take of each other.

Attachment A

To the Regents of the University of California:

I, Dr. Dennis Kelly, do hereby resign my employment from the University of California, effective March 6, 2003.

Dennis H Kelly MD

Dr. Dennis Kelly

Dated: 8/5/02

Kelly/ University of California Agreement
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